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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,805	03/30/2000	Jay S. Walker	99-077	7826

22927 7590 09/09/2004

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STAMFORD, CT 06905

EXAMINER

CUFF, MICHAEL A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/538,805

Applicant(s)

WALKER ET AL. 

Examiner

Michael Cuff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35, 37-56 and 65-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35, 37-56 and 65-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's response

1. Applicant's amendment, filed 5/7/04, has been received and entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17, 20, 22-28, 35, 37-39, 41-44, 47, 48, 50-56 and 65-74 are rejected under 35 U.S.C. 102(b) as being anticipated by www.cryobank.com.

www.cryobank.com, dated 2/8/1997, shows a sytem for providing frozen semen.

There is a donor catalog (receiving information identifying a product). The is a facility (first retailer). There are several different programs one can sign up for and the website will provide the terms. (determining term of a subscription). Section "B1" of the reference shows the option of client pickup (customer visits the first retailer to obtain units). Note in section "A" the purchase7 store and purchase & store2 options (subscriptions) where the customer may return periodically for more product. Section "B1" also shows fees for changes and cancellations (penalty assessed for customer violation of terms). Tracking fulfillment of this medical nature is inherently done by both provider and customer. Extreme care that the chosen donor is provided to the specific customer is also inherent (the donor identification number is the redemption identifier.)

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The donors are searchable in many different categories. Mensa donors or Olympic athlete donors could be considered a specific brand of product. Customers may be a couple (group of individuals).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 18, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over www.cryobank.com.

www.cryobank.com shows all of the limitations of the claims except for specifying a plurality of retailers.

The examiner takes Official Notice that it is old and well known that many medical offices have more than one office in order to make more money by being more available to customers.

Based on the discussion above, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the www.cryobank.com system to incorporate more offices in order to make more money by being more available to customers.

5. Claims 29-34, 40, 45, 46, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over www.cryobank.com.

www.cryobank.com shows all of the limitations of the claims except for specifying payments and account done by a controller.

The examiner takes Official Notice that it is old and well known that many professional offices outsource accounting and payment functions in order to focus more on the profession instead of the business.

Based on the discussion above, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the www.cryobank.com system to outsource accounting and payment functions in order to focus more on the profession instead of the business.

Response to Arguments

6. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then


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the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cuff whose telephone number is (703) 308-0610. The examiner can normally be reached on 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 9/3/04
Michael Cuff
September 3, 2004